IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N. BASHA

Crl.O.P.No.7125 of 2006

Rajesh S.Adani
Managing Director,
M/s.Adani Wilmar Ltd.,
'Fortune House',
Near to Adani House,
Mithakhali Cross Road,
Navrangpura,
Ahmedabad - 380 009. ... Petitioner

Vs

M.Chandrasegara Sastri,
Senior Food Inspector,
Office of the Deputy Director (Public Health),
Local (Health) Authority,
Pondicherry. ... Respondent

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.739 of 2005 on the file of the learned Judicial Magistrate No.I, Pondicherry, quash all further proceedings as against the petitioner herein.

For Petitioner : Mr.A.Ramesh
for M/s.Ram and Ram

For Respondent : Mr.M.R.Thangavelu
Public Prosecutor (Puducherry)

O R D E R

The petitioner, who has been arrayed as A-3, has come forward with this petition seeking for the relief of quashing the proceedings initiated against him by the respondent/complainant in C.C.No.739 of 2005 on the file of the learned Judicial Magistrate No.I, Pondicherry, for the offence punishable under Section 16 (1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act") for the alleged contravention of Section 7(1) r/w 2(ia)(m) of the Act.

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2. Mr.A.Ramesh, learned counsel appearing for the petitioner, has contended that there are certain contravention of mandatory provisions contemplated under the Act and Rules and therefore, the entire proceedings is liable to be quashed as the same is vitiated by the non-compliance of the mandatory provisions contemplated under the Act.

3. It is submitted by the learned counsel for the petitioner that the respondent, viz., Senior Food Inspector inspected the premises of A-1, viz., "Sakthi Ganapathi Super Market" at No.151, Kamarajar Street, Veeman Nagar, Pondicherry, on 10.05.2005 at 12.35 noon and taken samples of "Purita Vanaspathi" paying a sum of Rs.28.50. It is submitted that the Senior Food Inspector claimed to have followed the procedure contemplated under the Act for taking the sample and sending the same to the Public Analyst of Pondicherry. It is further submitted that it is seen from the Public Analyst's report that the said sample contains more free fatty acids than the permissible limit, as per Clause A.19 of the Appendix B to Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules", and the Public Analyst opined that the said sample is adulterated. On the basis of such analyst report, the present complaint is filed against A-1/the vendor, A-2/the dealer and A-3/the petitioner, who is the manufacturer of "Purita Vanaspathi".

4. The learned counsel for the petitioner raised the following grounds for quashing the proceedings in this case:

(i) There is absolutely no connection between the petitioner/A-3 (manufacturer) with the vendor or even the dealer as both the vendor and dealer are not found in possession of the warranty with a view to fasten the liability of the manufacturer, the petitioner/A-3 herein in this case.

(ii) As per the report of the Public Analyst, Pondicherry, there is a mention about the quantity of the sample, batch number, date of manufacturing and the name of the manufacturer etc. The said details were also found in the complaint, but on the application of the petitioner herein, while the sample was sent to Central Food Laboratory, Ghaziabad, for analysis, the Director, Central Food Laboratory, had mentioned that neither the batch number nor the date of manufacture were available on the label and he has also further stated only 200 ml i.e.179.4 gms were available for analysis and as such the sealed packets of the samples which have been sent do not tally with the samples lifted by the Food Inspector. Consequently, the opinion given by the Director of Central Food Laboratory does not pertain to the samples lifted. It is also pointed out by the learned counsel for the petitioner that once the sample sent to the Central Food Laboratory and analysed and thereafter, the Central Food Laboratory gives a report, such report supersedes the report of the Public Analyst by virtue of Section 13 (3) of the Act. Therefore, this serious infirmity vitiates the entire

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trial. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in Chetumal V. State of M.P. in 1981 SCC (Cri.) 632 in support of his contention.

(iii) In view of Section 20-A of the Act, the manufacturer could be implicated only after the commencement of trial and after taking the evidence which discloses the involvement of the manufacturer, and before that implicating the manufacturer as one of the accused is a pre-mature one and even on this ground the complaint is liable to be quashed. The learned counsel for the petitioner placed reliance on the decisions of the Hon'ble Supreme Court in support of his contention in Omparkash Shivprakash V. K.I.Kuriakose in 2000 SCC (Cri.) 1 and in Bhagwan Das Jagdish Chander V. Delhi Administration in 1975 SCC (Cri.) 410.

5. Per contra, learned Public Prosecutor (Puducherry) contended that there is no infirmity or illegality in the initiation of the proceedings against the petitioner herein who is the manufacturer of the sample seized from the vendor, viz., A-1. It is submitted by the learned Public Prosecutor that the grounds raised by the learned counsel for the petitioner could be considered only at the time of full-fledged trial and those grounds should not be considered at the threshold of the complaint as the respondent should have opportunity to adduce sufficient evidence to explain any defect much less the defect alleged by the petitioner in respect of the samples sent for analysis to the Central Food Laboratory. It is further submitted that the petitioner, being the manufacture, has been implicated in this case only on the basis of the label found at the time of seizure of the sample as such Section 20A of the Act is not applicable to the present case.

6. I have carefully considered the rival contentions put forward by either side and also perused the entire materials available on record including the impugned complaint.

7. A perusal of the complaint discloses that the petitioner has been implicated as A-3 in this case on the ground that the petitioner is the manufacturer of the sample taken from the premises of A-1, viz., the vendor who was running a supermarket under the name and style as "Sakthi Ganapathi Super Market". Though it is claimed by the complainant that at the time of taking sample of "Purita Vanaspathi" he has found the label of the manufacture containing the name of the manufacture as that of the petitioner, the undisputed fact remains on the basis of the prima facie materials available on record that there is a serious defect in respect of sending sample to the Central Food Laboratory for analysis to the effect that the sample found by the Director, Central Food Laboratory, is not tallied with the sample which was subjected for analysis by the Public Analyst, Pondicherry. It is also rightly pointed out by the learned counsel that even the Director of the Central Food Laboratory has categorically stated in his report to the effect that neither the batch number nor the date of manufacture were available on

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the label. Further it is also found mentioned that the sample is valid for consumption only for a period of nine months. It is relevant to note that the sample was packed in the month of November 2004, as stated in the complaint and in the Memorandum of Public Analyst under Form VII, and the same was analysed by the Central Food Laboratory on 05.12.2005 and as such it is clear that the analysis of the said sample itself was done beyond the period of nine months and at that time the sample itself is unfit for human consumption and as such prescribed standard could not be expected in the sample. Therefore, the analysis of the said sample itself is a futile exercise in view of the expiry date of the said sample is itself only for a period of nine months, as already stated.

8. Yet another defect found on the basis of the perusal of the report of the Central Food Laboratory is that even the quantity is also not tallied between the report of the Central Food Laboratory and the report of the Public Analyst, Pondicherry, as the Central Food Laboratory report mentioning the quantity as 200 ml i.e., 179.4 gms at 45° C, while the quantity of the sample mentioned in the report of the Public Analyst, Pondicherry, is 200 gms. Therefore, this Court is of the considered view that no value could be attached to the Public Analyst report and the report of the Central Food Laboratory in this case in view of the above said inherent improbabilities and infirmities and in view of the fact that admittedly as per Section 13(3) of the Act the report of the Director of Central Food Laboratory supersede the report of the Public Analyst.

9. Section 13 (3) of the Act reads hereunder :

> "(3) The Certificate issued by the Director of Central Food Laboratory under Sub Section 2(B) shall supersede the report given by the Public Analyst under Sub Section (1)."

10. The Hon'ble Apex Court has categorically held in Chetumal V. State of M.P. in 1981 SCC (Cri.) 632 as follows:

> "Under Section 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so superseded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering of the seals, there was really no evidence before the court on the basis of which the appellant could be convicted. The court could not fall back on the report of the Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the

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> Director of the Central Food Laboratory. In the present case the appellant was deprived of the opportunity to which he was entitled for no fault of his. It was not, therefore, open to the court to fall back upon the report of the Public Analyst to convict the appellant."

The above principle of law laid down by the Hon'ble Apex Court is squarely applicable to the facts of the instant case as in this case also the sample found by the Director, Central Food Laboratory is not tallied with the sample which was subjected for analysis by the Public Analyst, Pondicherry, as, as already stated, the batch number and the date of manufacture were also not available on the label and added to that, the sample is valid for consumption for a period of nine months and the sample was packed in the month of November 2004 and the same was analysed by the Central Food Laboratory only on 05.12.2005 and as such the said analysis of sample itself is futile exercise. As this report of the Central Food Laboratory supersedes earlier report of the Public Analyst, Pondicherry, the prosecution is left with no other evidence at all to allege that the sample is adulterated one.

11. Apart from the above said serious infirmity and illegality, it is also to be borne in mind, as pointed out by the learned counsel for the petitioner, that there is absolutely not an iota of material available on record to connect the petitioner herein with the other accused, viz., A-1/vendor and A-2/dealer as both of them were not possessed with any warranty issued by the manufacturer, the petitioner herein. Therefore, by no stretch of imagination it could be stated that the sample which was said to have been seized from the premises of the vendor, viz., A-1 is manufacture4d and sold by A-3.

12. A three Judge Bench of the Hon'ble Apex Court has held in Bhagwan Das Jagdish Chander V. Delhi Administration in 1975 SCC (Cri.) 410 as follows :

> "24. .... in a suitable case, a vendor, a distributor, and a manufacturer could be tried together provided the allegations made before the Court show that there are connecting links between their activities so as to constitute the same transaction. The connecting links, in a case such as the one before us, could be provided by : firstly, the fact that a sale at an anterior stage could be viewed as the cause of the subsequent sale ; secondly, the allegation that each of the accused parted with the article of food when it was in an adulterated state, and, thirdly, by the common object of the manufacturer the distributor, and the vendor, that the article should reach the consumer to be used as food. The third and last mentioned link seems decisive and must tilt the balance in favour of legality of a joint trial of the parties concerned. But, we are also conscious of the fact that courts cannot ignore broader requirements of justice."

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The above said principle of law laid down by the Hon'ble Apex Court is squarely applicable to the facts of the instant case.

13. This Court also lastly constrained to state that even assuming that the petitioner who has been arrayed as A-3 is the manufacturer of the alleged sample taken from the premises of the vendor A-1, the procedure contemplated under Section 20-A of the Act alone has to be followed. Section 20-A of the Act reads hereunder :

> "Section 20A. Power of Court to implead manufacturer, etc. Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the court may, notwithstanding anything contained in sub section 3 of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974) or in section 20 proceed against him as though a prosecution had been instituted against him under section 20."

A reading of the above said provision makes it crystal clear that the manufacturer is liable to be implicated or prosecuted only after the commencement of the trial and only after taking the evidence which discloses the identity or involvement of the manufacturer.

14. In yet another decision in Omparkash Shivprakash V. K.I.Kuriakose and Others in 2000 SCC (Cri.) 1 the Hon'ble Apex Court has held as follows :

> "One of the differences between Section 319 CrPC and Section 20-A of the Prevention of Food Adulteration Act is that while in the former even if it appears to the court from the evidence (either during inquiry or trial of the offence), that another person is to be tried along with the already arraigned accused, then the court can proceed against that other person, while in the latter the satisfaction of the court that such manufacturer (distributor or dealer) is also concerned with that offence must be gathered from "the evidence adduced before it during the trial". In other words, the power under Section 20-A cannot be invoked until the trial begins and after the trial ends.
>
> ....
>
> The word "trial" is not defined either in the Act or in CrPC. However CrPC has distinguished the trial from inquiry as could be noted from Section 2(g) CrPC wherein the word "inquiry" is defined. The term "trial" cannot be given a fixed meaning to be applied in all cases

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uniformly. The connotation of that word changes with the difference in the context in which the term is employed in a particular provision of any statute.

...

The scrutiny of Section 16-A of the Act and Section 262 (Ch.XXI), 251 and 254(1)(Ch.XX) CrPC reveals that the trial of offences under the Act begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 CrPC, if the Magistrates opts to hold summary trial. Hence, evidence in a trial under the Act can be adduced only after recording the plea of the accused as envisaged in the said section. Thus, it is clear that a Magistrate can implead any person under Section 20-A of the PFA Act only after reaching the stage envisaged in Section 254(1) CrPC.

...

Bhagsan Das Jagdish Chander V. Delhi Admn., (1975) 1 SCC 866 clarified

Delhi Cloth and General Mills Co., Ltd. V. State of M.P. (1995) 6 SCC 62 distinguished

Municipal Corpn. of Delhi V. R.Sahai (1979) 2 SCC 387 followed

Therefore, Section 20-A cannot be invoked before the stage of adducing evidence in the trial, nor can it be invoked after the conclusion of the trial. In the present case, the Magistrates has chosen to exercise the power prematurely and hence the action is without jurisdiction."

The above principle of law laid down by the three Judge Bench of the Hon'ble Apex Court clearly shows that a manufacturer could be prosecuted even before the commencement of trial provided there is prima facie material to show the link between the manufacturer and the vendor or dealer and as far as the instant case is concerned, as already pointed, there is not an iota of material available on record to show the connecting links between the petitioner who has been arrayed as A-3, manufacturer and the vendor/A-1. Therefore, even on this ground the proceedings initiated against the petitioner is liable to be quashed.

15. In view of the above said reasons, this Court is constrained to quash the proceedings pending against the petitioner.

16. It is also pertinent to note that in view of the findings of this Court that the very sample analysed by the Central Food Laboratory itself is not tallied with the sample analysed by the Public Analyst, Pondicherry, and more particularly in view of the specific provision contained under Section 13(3) of the Act to the effect that the Analyst Report of the Central Food Laboratory has to be superseded the Public

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Analyst Report of the Pondicherry and in view of the above said inherent infirmities contained in the Analyst report of the Central Food Laboratory and this Court held that the proceedings against the petitioner is liable to be quashed and the same ground is also available in respect of the other accused, who have been arrayed as A-1 and A-2 in this case and as this Court already held that the proceedings initiated against the petitioner is liable to be quashed, as stated above, though the other accused, A-1 and A-2 have not preferred any petition for quashing the proceedings, this Court is constrained to extend the same benefit to them. Accordingly, the entire proceedings initiated against the accused, viz., A-1 to A-3 in C.C.No.739 of 2005 on the file of the learned Judicial Magistrate No.I, Pondicherry, is hereby quashed.

gg

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Judicial Magistrate No.I, Pondicherry.

2. The Senior Food Inspector,
   O/o.The Deputy Director (Public Health),
   Local (Health) Authority,
   Pondicherry.

3. The Public Prosecutor (Pondicherry),
   High Court, Madras.

+ On cc to Mr. Ram & Ram, Advocates SR 66750

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